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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KARL FUGATE
- PLAINTIFF

VS.

RON ERDOS
- DEFENDANTS, ET. AL.

CASE NO. 1:19-CV-00030

JUDGE MATTHEW W. McFARLAND
MAG. JUDGE STEPHANIE K. BOWMAN

PLAINTIFF'S MEMORANDUM IN RESPONSE TO THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT Doc #61-63

THE DEFENDANTS DESIRE THIS COURT TO DENY THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANT THEIR OWN, CLAIMING THAT SUCH ACTION IS APPROPRIATE SINCE THERE'S NO EVIDENCE TO SUPPORT THE PLAINTIFFS MOTION BUT AN ABUNDANCE OF IT SUPPORTING THEIRS. THE PLAINTIFF BEGS TO DIFFER, AND ASSERTS THAT AN OBJECTIVE EXAMINATION OF THE FACTS CAN LEAD THIS COURT TO ONLY ONE CONCLUSION. NAMELY THAT THE DEFENDANTS PROTESTATIONS SHOULD BE DISMISSED FOR THE NONSENSE THAT THEY ARE AND THAT JUDGMENT IS APPROPRIATELY RENDERED IN PLAINTIFF'S FAVOR.

THE PLAINTIFF HAS ALREADY ADDRESSED THE DEFENDANTS ASSERTIONS REGARDING THE 2ND PART OF THIS CASE, NAMELY THE UNCONSTITUTIONAL REGIMINE OF SYSTEMATIC STRIPPING IMPLEMENTED BY DEFENDANT ERDOS AFTER THE EVENTS WHICH

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occurred on January 17th, 2017. He now focuses on the Defendants Rebuttal (Doc. #61-63) of his 8th Amendment claim brought to this Court after he sufferred a surreptitious beating at their hands, in immediate response to the event of January 17th, 2017.

The Plaintiff acknowledges that he assaulted a staff member of S.O.C.F. at a Security Classification Hearing on January 17th, 2017. As the Defendants note in Doc. #62 (Pg. 4), he did so upon learning that instead of having his Security Level raised to 5B he was going to remain at Level 4B. Which meant that he would continue to be housed there in S.O.C.F.'s dungeon rather than be transferred to the Ohio State Penitentiary, where living conditions are much better. To secure himself this transfer is why he had assaulted the inmate in the first place, and being committed to this course of action, when he learned that S.O.C.F. had no intention of transferring him to O.S.P. he therefore decided to MAKE them do so by perpetrating another act of violence. This time on a staff member.

As the Defendants note (Doc. #62, Pg. 12), it is well-recognized that by their very nature prisons are dangerous places. Adding to this observation the Plaintiff points out that they can become even more dangerous when administered by a group of personages possessed of a clannish strong-arm mentality, as those at S.O.C.F. are notorious for being. Conditions can be made to become so intolerable that prisoners are driven to do desperate things to escape them for 'greener pastures' at Ohio's super-max facility, as the Plaintiff did.

Now the Plaintiff is not trying to excuse or justify his actions of January 17th, 2017, the issue as to his motivations only comes up due to the Defendants

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PLACING of SUCH HEAVY EMPHASIS ON THE PLAINTIFF'S APPARENT PROPENSITY FOR VIOLANCE. OBSERVATIONS WHICH ARE OBVIOUSLY MADE IN THE HOPES of PERSUADING THIS COURT TO ADOPT THE VIEW THAT WHATEVER HAPPENED TO THE PLAINTIFF IN RESPONSE TO HIS BEHAVIOR ON THAT DAY WAS JUSTIFIABLE: A VIEW THAT THE DEFENDANTS CLEARLY HOLD, AS EVIDENCED IN THEIR BEHAVIOR of THAT DAY.

AS THE DEFENDANTS NOTE, PRISONS ARE INHERENTLY VIOLENT AND DANGEROUS PLACES: THIS BEING A WELL-RECOGNIZED FACT THAT ANYONE WHO CHOOSES TO WORK IN SUCH A PLACE MUST DEAL WITH. AND HOW AN EMPLOYEE IN THE PRISON SYSTEM DEALS WITH THIS REALITY SHOULD BE AS A LAW-ENFORCER. WHEN SOMEONE BREAKS THE LAW THEY ARE TO BE BROUGHT UP ON CHARGES AND THEN SUBJECTED TO DUE PROCESS, AS PRISONERS ARE AT THE 'RULES INFRACTION BOARD'.

WHAT SUCH EMPLOYEE'S ARE NOT TO DO IN THE ENFORCING of PRISON DISCIPLINE IS TO TAKE PRISONERS TO A TORTURE-ROOM FOR A SUMMARY BEATING, AFTER THE OCCURANCE of INCIDENTS WHICH THEY DONT LIKE. CONDUCTING BUSINESS IN SUCH A MANNER BEING REPUGNANT TO THE CONSCIENCE of ANY GENUINE ENFORCER of THE LAW, I DARE SAY.

WILKINS V. GADDY, 559 U.S. 34, 37-38 (2010)

IN THEIR MOTION FOR SUMMARY JUDGMENT THE DEFENDANTS DENY THAT ANY FORCE WAS USED AGAINST THE PLAINTIFF AT THE INFIRMARY (DOC# 62, PG. 6) AND STATE THAT BOTH DEFENDANTS MCCOY AND FRI STRUCK PLAINTIFF IN HIS FACIAL AREA (PG. 4) WITH "CLOSED-FIST STRIKES" WHILE IN THE HEARING ROOM, IMMEDIATELY AFTER AND IN RESPONSE TO PLAINTIFF'S ASSAULT of STAFF-MEMBER ANDERSON.

ON PG. 14 of DOC. # 62 IT IS STATED THAT THE REASON WITH OFFICER FRI USED CLOSED-FIST STRIKES TO THE PLAINTIFF'S FACE WAS SO AS TO GAIN CONTROL of THE

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PLAINTIFF'S RIGHT ARM - AND I SUPPOSE THAT OFFICER MCCOY WAS STRIKING HIM IN THE FACE SO AS TO GAIN CONTROL OF HIS LEFT ARM? HOW WOULD THAT WORK ANYWAYS, HOW DOES ONE SECURE CONTROL OF SOMEONES ARM BY STRIKING THEM IN THE FACE? STRIKING SOMEONE IN THE FACE FOR THE PURPOSE OF SECURING CONTROL OF THEIR ARMS IS A RATIONAL COURSE OF ACTION ONLY IF THE INTENT IS TO KNOCK THE TARGET SENSELESS, AND THAT HAROLD SEEMS LIKE A TECHNIQUE THAT PRISON PERSONNEL ARE TRAINED IN TO SECURE CONTROL OVER AN INMATE LAYING ON THE GROUND - RIGHT? TWO MEN SIMULTANEOUSLY DELEVERING CLOSED-FISTS BLOWS TO SOMEONES FACE CA-N'T POSSIBLY BE AN ACTION INTENDED TO SECURE CONTROL OF THEIR TARGETS ARMS. SUCH A THING SOUNDS INCREDULOUS BECAUSE IT IS.

THE DEFENDANTS STATE THAT AS PART OF PLAINTIFF'S RESISTANCE TO BEING SEIZ-ED BY THE TWO OFFICERS HE WAS WILDLY SWINGING HIS ARMS (PG. 14) AND HITTING TH-EM WITH THE "RATCHET ARM" OF HIS CUFFS - NOT THAT HE WAS TRYING TO HIT THEM, BUT TH-AT HE ACTUALLY WAS HITTING THEM. ON WHAT PART OF THEIR BODY DID THESE BLOWS LA-ND, I WONDER?

TO ENSURE THAT THIS COURT HAS THE CORRECT VISUAL, BE IT EXPLAINED THAT WH-EN THE PLAINTIFF WAS ESCORTED TO THIS HEARING ROOM IT WAS IN FULL RESTRAINTS: HANDCUFFS AND LEG-RESTRAINTS. ONCE SAT DOWN BEFORE THE HEARING OFFICERS AND INFORMED THAT HE'D BE STAYING IN S.O.C.F.'S DUNGEON RATHER THAN BEING TRAN-SFERRED TO O.S.P., THE PLAINTIFF PICKED ONE CUFF SO THAT HE COULD DELIVER THE BLOW TO ANDERSON. SO THE HANDCUFFS WERE STILL ATTACHED TO ONE WRIST, AND SIN-CE THE OTHER SIDE OF THE HANDCUFFS WAS 'PICKED' THIS THEREFORE MEANT THAT THE TOOTHED 'RATCHET ARM' OF THAT SIDE WAS SWINGING FREE.

SO AGAIN, WHAT PART OF THE BODY DID THE OFFICERS RECEIVE THOSE BLOWS FROM THE TOOTHED RATCHET ARM OF THESE TEMPERED STEEL HANDCUFFS? A BLOW DELI-

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vered with any sort of force from such a weapon would surely inflict some sort of injury - at least a scratch, puncture or bruise - and it doesnt appear that either officer reported anything at all. As they surely would've, if an injury was sufferred while on the job.

The fact of the matter is that the defendants story here is a **lie**, concocted so as to cover their rear-ends from any possible repurcussions for the actions taken by their compatriots against the plaintiff down in the infirmary. After delivering the strike to Andersons cheek the plaintiff immediately dropped his battery casing and threw himself to the floor as officer Fri and M^c^Coy rushed him, knowing that any resistance would be met with potentially deadly force. His purpose was accomplished with the strike upon Anderson, for now he was veritably guaranteed a transfer out of S.O.C.F.

There's a camera that points directly into the hearing room whereat this incident took place, and the plaintiff has requested its footage multiple times in multiple discovery requests. With which the defendant don't comply - as the plaintiff informed this court. And one thing is certain here, namely that **IF** what was on that video helped the defendants or corroborated their version of events in any way this court would have ten copies of it sitting on your desk.

The defendants have carefully cherry-picked what they wanted this court to see, but the fact of the matter is that what happened in the hearing room is ultimately **irrelevant**, because if the plaintiff didn't suffer his facial lacerations in the hearing room - as video of him being escorted down the hallway should show - then this means that he sufferred them down at the infirmary. And as the defendants allege (pg. 6), no for-

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CE WAS USED AGAINST THE PLAINTIFF AT THE INFIRMARY. WHICH MEANS THAT HE DI-DNT GIVE THEM JUSTIFICATION TO USE FORCE AGAINST HIM DOWN THERE.

THE FRI QUESTION

THE ADO MADE BY THE DEFENDANTS OVER THE FACT THAT OFFICER FRI WASN'T IN FACT PART OF THE INFIRMARY ESCORT PARTY IS OBVIOUSLY INTENDED TO IMPRESS TH-IS COURT WITH THE PLAINTIFF'S UNRELIABILITY, IN THE HOPES OF SUCCESSFULLY IMPU-GNING HIS ALLEGATIONS AS A WHOLE. IF THE VIDEO DOESN'T SHOW OFFICER FRI AS BEING THERE, THEN THE PLAINTIFF ACCEPTS THIS FACT. BUT DO ALLOW HIM TO EXPLAIN WHY IT WAS POSSIBLE FOR HIM TO BE MISTAKEN HERE.

FRI WAS INVOLVED IN EVENTS FROM THE START, THERE IN THE HEARING ROOM. HE WAS AMONGST THOSE WHO TOOK THE PLAINTIFF TO THE HOLDING CAGE, PRIOR TO THE INF-IRMARY TRIP. THEN WHILE ON THE WAY TO THE INFIRMARY THE PLAINTIFF WASN'T EXACTLY IN A POSITION TO LOOK ABOUT HIMSELF AT LEISURE, PARTICULARLY SINCE HOW INMAT-ES ARE HANDLED AFTER INCIDENTS OF VIOLENCE IS BY HAVING THEIR ARMS JACKED UP BEHIND THEM: A MANEUVER WHICH FORCES THE BODY FORWARD, SO ONES HEAD IS THEREFORE KEPT FACING DOWN TO THE FLOOR. AND THEN JUST BEFORE THE ESCORT PARTY ENTERS THE INFIRMARY AS TRIP'S END, THE PLAINTIFF IS PEPPER-SPRAYED IN THE FACE, BLINDING HIM. IN A BLINDED CONDITION BEING HOW HE WAS BEAT-EN THEREIN.

FURTHERMORE, WHEN A PERSON IS HANDCUFFED BEHIND THEIR BACK AND ARE HAVING THEIR ARMS JACKED UP BEHIND THEM, IT DOESN'T TAKE MUCH NOTICIBLE EFF-ORT FOR ONE TO EXERT TENDON-SNAPPING FORCE ON ARMS WHICH ARE ALREADY LEVE-RAGED TO MAXIMUM EXTENT. IN FACT THE APPLICATION OF SUCH FORCE WOULD BE NEARLY IMPERCEPTIBLE WHEN ONE IS IN SUCH A POSITION - AND TO CLARIFY, IT WAS IN THE

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Holding-cage area when Sgt. Felts ordered the Plaintiff's escort to break his arm, Not on the trip down to the Infirmary (pg. 3) as erroneously stated in the Defendants Memorandum.

But here, again, this issue as to the attempted arm-breaking is irrelevent. On pg. 8 of Doc. #62 the Defendants Note that "Plaintiff does not appear to seek Summary Judgment on the use of Force used by McCoy and Fri after he attacked Anderson, or Felts use of OC Spray" - and here the Plaintiff would not that Nor does he seek it for this attempted arm-breaking ordered by Sgt. Felts. In Fact the Plaintiff's 8th Amendment Claim isn't about anything else other than what occurred IN the Infirmary, whereat the Defendants had No Justification for using Force against him. In the Brutal, Malicious manner that they did.

The Plaintiff hasn't seen the Tape and so cant be sure, But if this Court Determines that he was Mistaken about Officer Fri being a Part of the Infirmary Escort Party, then he Doesn't object to its Dismissal of the case against Officer Fri. The Guilty Parties are Those whom the Tape Shows taking him in Through the Infirmary's Doors, whoever they may be.

The Infirmary

Let it again be Stated that the Plaintiff's 8th Amendment Claim brought as a Result of the Incidents which occurred at S.O.C.F. on January 17th, 2017, Doesn't involve anything other than what happened to him in the Infirmary at the Hands of the Defendants, Within the Darkness of that Secret Torture-Room of Theirs. And what is the Defendants Defense to the Allegations Brought by the Plaintiff Here? Well, First Let us Note that Their Emphasis on the Fact that

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Both McCoy and Fri delivered multiple closed-fisted blows to the plaintiffs facial area is clearly an effort to explain any injuries to his face. Injuries which would've thus been the result of a justified use of force, if their story about the plaintiff's desperate resistance to being subdued in the hearing room is believed.

In other places, however, we find them emphasing how (pg.14) the plaintiff admitted that he had no injuries prior to arrival at the infirmary, a fact which they use to rebut the claim that excessive force was used against him. The crux of their defense is actually to be found on pg's 8 and 9, whereat they're found asserting that no evidence exists of a facial abrasion at all — despite the fact that two large bandages are shown on his forehead, in the photo submitted to this court with the plaintiff's motion for summary judgment.

Well, no, upon closer examination that's not exactly what they're saying here. Rather than saying that no evidence of facial injuries exist, they're saying that there's nothing in the record which describes the abrasion. The fact of the abrasion (pg.9) is established by the medical record, they acknowledge, it's just not adequately described. Apparently. What would be an adequate description, pray tell? Precese length, exact depth, the jaggedness or cleanness of the cut? And the plaintiff finds it most disingenuous that his opponent characterizes the injury inflicted on staff member anderson as a gash accross his face, while calling what the plaintiff had a mere 'abrasion'.

No, it's just the opposite. Anderson was scratched on the cheek with the pointy corner of a tin battery case and never had to seek any medical attention at all, whereas the plaintiff was nearly beat to death — the most immediately visible result of this beating being a gash on his forehead. Split

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TO THE BONE HE WAS.

THE PLAINTIFF NOTES FOR THIS COURT THAT THE EXTRAORDINARY MEASURE OF DELIVERING THE PLAINTIFF TO AN OUTSIDE HOSPITAL (PG.3) WAS ORDERED BY THE DOCTOR UPON HIS SIGHT OF THE PLAINTIFFS CONDITION. AN AMBULANCE WAS CALLED INTO A MAXIMUM SECURITY PRISON TO TAKE THE PLAINTIFF TO A LOCAL EMERGENCY ROOM, WHICH IS ONLY DONE IN LIFE-THREATNING CIRCUMSTANCES. ONE WONDERS WHAT THE DOCTOR SAW TO ALARM HIM SO. PROBABLY SIGNS OF A SERIOUS HEAD INJURY THAT WENT BEYOND A MERE GASH IN THE SKIN, WHICH COULD BE STICHED-UP IN-HOUSE.

WE'D KNOW EXACTLY WHAT THE DOCTOR SAW TO ALARM HIM SO IF THE DEFENDANTS HAD COMPLIED WITH THE PLAINTIFFS DISCOVERY REQUESTS, IN A PROPER MANNER. IF THIS COURT DETERMINES THAT THE RECORD IS PRESENTLY INSUFFICIENT TO GRANT THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, THEN THE PLAINTIFF WOULD ASK THIS COURT TO ORDER THE DEFENDANTS TO PROPERLY COMPLY WITH HIS DISCOVERY REQUESTS. HE WANTS THE FOOTAGE FROM ALL CAMERAS THAT CAPTURED THE EVENTS OF THAT DAY, HE WANTS ALL MEDICAL RECORDS WHICH DESCRIBE THE FULL EXTENT OF HIS INJURIES AND ALL REPORTS WRITTEN ON THIS INCIDENT. HE'D ALSO LIKE THE PICTURES TAKEN OF HIM AFTER HIS RETURN FROM THE HOSPITAL, WHEN THE BRUISES COVERING HIS FACE AND BODY HAD TIME TO SET IN.

THE PLAINTIFF WELCOMES A FULL AIRING OF THE FACTS HERE, AT TRIAL IF THAT'S WHERE THIS MUST GO.

RESPECTFULLY SUBMITTED,

x Karl Fugate

KARL FUGATE #A528-949
O.S.P.
878 COITSVILLE-HUBBARD RD.
YOUNGSTOWN, OH 44505

* EXECUTED AND VERIFIED THIS 8TH OF NOVEMBER, 2020.

KITE PROCEDURE

1. *Check with your Sergeant or Case Manager to see if this communication can be handled without a kite.*
2. *Write only to the Department that handles the problem you have. Others will merely forward your kite.*
3. *State your problems clearly and completely and thereby get immediate attention.*
4. *Avoid duplication of Kites, Writing to more than one office about the same thing will not obtain any faster attention.*
5. *Kites are to be used only for communication between inmates and Institutional Staff and not for any other purpose.*

Number:	Name:	Date:
Unit:	Lock:	Assignment:

To: _____

FOLD HERE

CASE MANAGER
CLASSIFICATION
COMMISSARY
DENTAL
USE HEALTH SERVICES REQUEST FORM, DRC5373 TO ACCESS DENTAL CARE
MEDICAL
USE HEALTH SERVICES REQUEST FORM, DRC5373 TO ACCESS MEDICAL CARE
MAJOR
MENTAL HEALTH

WARDEN
DEPUTY WARDEN ADMINISTRATION/ SPECIAL SERVICES/ PROGRAMS
DEPUTY WARDEN OPERATIONS
INST. INSPECTOR
INVESTIGATOR
JOB COORDINATOR
LIBRARY
MAIL ROOM

QUARTERMASTER
RECORDS
RECOVERY SERVICES
RECREATION
RELIGIOUS SERVICES
UNIT MANAGER _____
EDUCATION
FOOD SERVICE
OTHER _____

DRC 2005 (Rev. 08/2014)

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O.S.
878 COITSVILLE-HUBBARD RD.
YOUNGSTOWN, OHIO 44505

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U.S. DISTRICT COURT FOR THE SOUTHERN DIST. OF OHIO
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CINCINNATI, OHIO 45202